FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 494/2005

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : March 22, 2007.

Head Shri Dhanagare for the appellants, and Shri Mirza for the respondents.

The appellants are the original defendants. A suit was filed by the respondents/ plaintiffs for partition and separate possession of the property. The defendants had raised a plea that the plaintiffs were not entitled to seek partition and separate possession of the property as the plaintiffs had relinquished their shares in the suit property by the relinquishment deed dated 20/9/1982. Both the Courts discarded this piece of the evidence on the ground that the relinquishment deed exh.77 was compulsorily registrable and since it was not registered, it cannot be read in evidence. Both the Courts have held that the plaintiffs were entitled for a decree for partition and separate possession of the property and, therefore, granted a decree in favour of the plaintiffs.

Shri Dhanagare, the learned counsel for the appellants, submitted that the appellate Court had not framed the points for determination in a proper manner and since it was necessary for the appellate Court to

have framed the points for determination covering all the material issues involved in the lis, under the provisions of Order XLI, Rule 31 C.P.C., the judgment of the appellate Court was liable to be set aside. The counsel for the appellants also submitted that the Courts ought not have discarded the relinquishment deed solely on the ground that it was not registered as the plaintiffs had not objected to the admissibility of the document at the time of tendering the document in evidence and it has been laid down in a case reported in **2003(1) Mh. L.J. 994** that when an objection to the admissibility of the document on account of insufficiency of stamp was raised and decided by the trial Court, the decision becomes final and cannot be reopened in an appeal.

The first submission made on behalf of the appellants that the judgment passed by the appellate Court is liable to be set aside solely on the ground that the points for determination were not properly framed, cannot be accepted as though the appellate Court had framed the points for determination in a generalized form, the judgment of the appellate Court shows that all major issues involved in the controversy were considered by the appellate Court. On a combined reading of the provisions of Order XLI Rule 31 of C.P.P. and Section 99 of C.P.C., it is clear that a judgment or a decree cannot be reversed or substantially varied solely on an error, defect or irregularity in any proceedings, not affecting the merits of the case or the jurisdiction of the trial as well as the appellate Courts.

The second submission made on behalf of

the appellants is also liable to be rejected as the judgment reported in **2004(1) Mh. L.J. 994** deals with a case under the Bombay Stamps Act and does not deal with the case under the Registration Act. A relinquishment deed is a compulsorily registrable document under the provisions of the Registration Act and since the relinquishment deed in the instant case was not registered, both the Courts rightly held that the relinquishment deed was inadmissible in evidence. The Courts, therefore, came to a conclusion that the defendants had failed to prove that the plaintiffs had relinquished their shares in the suit property in favour of the defendants. Absence of any objection to the admissibility of the relinquishment deed would not make the unregistered relinquishment deed admissible in evidence as the relinquishment deed is a compulsorily registrable document under the Registration Act.

For the aforesaid reasons, I find no merits in this second appeal and the same is dismissed with no order as to costs.

JUDGE

RMP